

FILED

DEC 27 2004

CLERK, U.S. DISTRICT COURT
By _____ Deputy _____Civil Action No.
3:04CIV-2169-N

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

BLUE SKIES ALLIANCE, <i>et al.</i> ,	}
Plaintiffs,	}
v.	}
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY and MICHAEL O. LEAVITT, Administrator of the United States Environmental Protection Agency, <i>et al.</i> ,	}
Defendants.	}

Pursuant to the Court's scheduling order of December 17, 2004, the parties submit the Joint Status Report as follows:

1. Nature of the case and contentions of the parties: Plaintiffs allege that the federal defendants (jointly referred to "EPA") have failed to perform two duties allegedly mandated by the Clean Air Act ("CAA"). First, plaintiffs allege that EPA failed to determine whether the Dallas - Ft. Worth air quality region ("Area") attained the National Ambient Air Quality Standard ("NAAQS") for ozone by the applicable attainment date, November 15, 1999; and to publish notice of its determination and proper classification for the Area in the Federal Register by May 15, 2000, pursuant to CAA section 181(b)(2), 42 U.S.C. § 7511(b)(2). Second, plaintiffs allege that EPA has failed to take final action to approve or disapprove, in whole or in part, the state implementation plans submitted by Texas for the Area within the time allowed for EPA to act by CAA section 110(k)(2), 42 U.S.C. § 7410(k)(2).

Plaintiffs request the Court to order EPA to complete these two duties immediately. EPA maintains that it is entitled to a reasonable time to complete these actions in order to comply with the procedural requirements of the CAA and the Administrative Procedure Act.

Defendant-intervenor, the Texas Commission on Environmental Quality ("TCEQ"), agrees that the EPA has not taken final action on the entirety of the two state implementation plan revisions submitted by Texas on October 25, 1999, and April 25, 2000, but the TCEQ asserts that EPA has taken final action on portions of these submittals including the motor

vehicle emissions budget contained in the DFW attainment plan and certain control measures contained in the plan submittals. The TCEQ supports EPA's position that, if EPA action is required, EPA is entitled to a reasonable time to complete such actions.

2. Pending and contemplated motions, including the possible joinder of other parties:

The parties are contemplating summary judgment motions. The parties do not plan on joining additional parties. The TCEQ anticipates additional intervenors.

3. Prospects for settlement and whether mediation might facilitate settlement: The

parties have been discussing settlement options. Plaintiffs believe that a qualified mediator experienced in this type of case could facilitate settlement, however, at this time plaintiffs do not see a need for formal mediation. EPA believes that continued negotiations could be fruitful, but that a mediator would not facilitate these discussions in this particular case. The TCEQ agrees with EPA.

4. Whether the attorneys in this case understand their responsibilities under – and will conduct this litigation in according to – the standards of *Dondi*, 121 F.R.D. 284 (N.D. Tex. 1988) (en banc) and this Court's Civil Justice Expense & Delay Reduction Plan: The attorneys understand their responsibilities and will conduct the litigation accordingly.

5. Whether the parties will agree to the trial of this case before United States Magistrate Judge Ramirez, under 28 U.S.C. 636(c) (1994): The parties do not agree to trial before the Magistrate Judge.

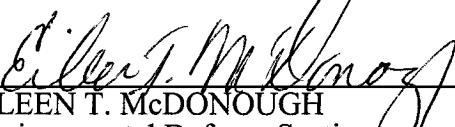
6. Whether there are requested modifications of the scheduling order: The parties are not now requesting any modifications to the schedule, but may do so in the future if appropriate to facilitate settlement.

7. Estimated length of trial: One day.

Respectfully submitted,

MARC CHYTILO
Law Office of Marc Chytilo
1505 Mission Canyon Rd
Santa Barbara, CA 93105
telephone: (805) 682-0585
fax: (805) 682-2379
airlaw5@cox.net

THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources Division


EILEEN T. McDONOUGH
Environmental Defense Section
United States Department of Justice
Post Office Box 23986
Washington, D.C. 20026-3986
telephone: (202) 514-3126
fax: (202) 514-8865
eileen.mcdonough@usdoj.gov

Of Counsel:

Jan Tierney
United States Environmental Protection Agency
Office of General Counsel
Ariel Rios Building - North
1200 Pennsylvania Ave., NW
Washington, DC 20460
telephone: (202) 564-5598
fax: (202) 564-5603
tierney.jan@epa.gov

Suzanne J. Smith-Roquemore
United States Environmental Protection Agency
Region VI
Office of Regional Counsel
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733
telephone: (214) 665-8027
fax: (214) 665-2182
smith-roquemore.suzanne@epa.gov

GREG ABBOTT
Attorney General of Texas

BARRY R. MCBEE
First Assistant Attorney General

EDWARD D. BURBACH
Deputy Attorney General for Litigation

KAREN W. KORNELL
Assistant Attorney General
Chief, Natural Resources Division

*Jane E. Atwood by
Elle P. McHenry*

JANE E. ATWOOD
Assistant Attorney General
State Bar No. 00796144

ANTHONY W. BENEDICT
Assistant Attorney General
State Bar No. 02129100

ANTHONY GRIGSBY
Assistant Attorney General
State Bar No. 08491500

Natural Resources Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Tel: (512) 463-2012
Fax: (512) 320-0052

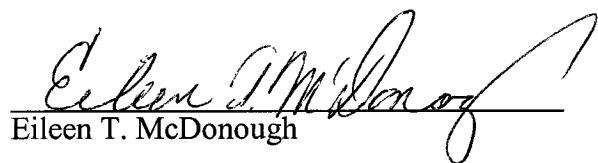
ATTORNEYS FOR THE TEXAS COMMISSION
ON ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by first-class mail, postage prepaid, on December 23, 2004, upon

Van Beckwith
Baker & Botts
2001 Ross Ave.
Dallas, TX 75201

Matthew L. Kuryla
910 Louisiana St.
3000 One Shell Plaza
Houston, TX 77002


Eileen T. McDonough